

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CIVIL NO.

STEP UP CHILDCARE INC,
a New Mexico corporation,

Defendant.

C O M P L A I N T

The United States of America for its complaint against the defendant states the following:

1. This action is brought under 28 U.S.C. § 1345 at the request of the U.S. Department of Agriculture, acting through the Rural Housing Service, ("USDA") by the United States Attorney, District of New Mexico, as authorized by the Attorney General.
2. Venue properly lies within this Court's district.
3. Defendant is believed to be a corporation operating in the State of New Mexico.
4. On or about April 21, 2009, Step Up Childcare Inc. ("Step Up"), by and through its President, Mary Dammann, executed and delivered a note to USDA, in the principal sum of Five Hundred Thousand dollars, \$500,000.00 ("Note 1"). The Note provided for payment of interest at the rate of 4.375% per annum from the date of the Note. The Note was to be paid in monthly installments as provided for therein, with the last installment

being due on or before 30 years from the date of the Note. The Note provided that upon default in the payment of any installment when due, the holder, at its option, could declare the entire indebtedness due and payable. A copy of Note 1 is attached as Exhibit 1.

5. On or about September 8, 2009, Step Up, by and through its President, Mary Dammann, executed and delivered a note to USDA, in the principal sum of Two Hundred and Fifty Thousand dollars, \$250,000.00 ("Note 2"). The Note provided for payment of interest at the rate of 4.375% per annum from the date of the Note. The Note was to be paid in monthly installments as provided for therein, with the last installment being due on or before 30 years from the date of the Note. The Note provided that upon default in the payment of any installment when due, the holder, at its option, could declare the entire indebtedness due and payable. A copy of Note 2 is attached as Exhibit 2.

6. On or about June 11, 2010, Step Up by and through its President, Mary Dammann, executed and delivered a note to USDA, in the principal sum of Seventy Five Thousand dollars, \$75,000.00 ("Note 3"). The Note provided for payment of interest at the rate of 4.125% per annum from the date of the Note. The Note was to be paid in monthly installments as provided for therein, with the last installment being due on or before 10 years from the date of the Note. The Note provided that upon default in the payment of any installment when due, the holder, at its option, could declare the entire indebtedness due and payable. A copy of Note 3 is attached as Exhibit 3.

7. To secure payment of Note 1, and any renewals or extensions thereof, Step Up, by and through its President, executed and delivered a mortgage to USDA dated April 21, 2009, upon real property located in Bernalillo County, New Mexico ("Mortgage 1").

The Mortgage was filed for record on April 21, 2009, Document No. 2009042888, records of Bernalillo County, New Mexico. The Mortgage is a first lien on the following described real property ("Property") subject to any outstanding taxes:

That certain Tract which is a portion of the Northwest One-Quarter (NW ¼) of Section Twenty-five (25) in Township Ten (10 North, Range Six (6) East of the New Mexico Principal Meridian, Bernalillo County, New Mexico, and being more particularly described as follows:

Beginning at the Northwest Corner of the tract herein described, which is the Northwest Corner of Section 25;

Thence, S. 89 deg. 43' 42" E., a distance of 641.77 feet;
Thence, S. 00 deg. 44' 47" E., a distance of 656.58 feet;
Thence, N. 88 deg. 46' 58" W., a distance of 648.59 feet;
Thence, N. 00 deg. 09' 59" W., a distance of 645.79 feet to the point of beginning.

A copy of the Mortgage is attached hereto as Exhibit 4.

8. To secure payment of Note 2, and any renewals or extensions thereof, Step Up, by and through its President, executed and delivered a mortgage to USDA dated September 8, 2009, upon real property located in Bernalillo County, New Mexico ("Mortgage 2"). The Mortgage was filed for record on September 9, 2009, Document No. 2009101984, records of Bernalillo County, New Mexico. The Mortgage is a first lien on the following described real property ("Property") subject to any outstanding taxes:

That certain Tract which is a portion of the Northwest One-Quarter (NW ¼) of Section Twenty-five (25) in Township Ten (10 North, Range Six (6) East of the New Mexico Principal Meridian, Bernalillo County, New Mexico, and being more particularly described as follows:

Beginning at the Northwest Corner of the tract herein described, which is the Northwest Corner of Section 25;

Thence, S. 89 deg. 43' 42" E., a distance of 641.77 feet;
Thence, S. 00 deg. 44' 47" E., a distance of 656.58 feet;
Thence, N. 88 deg. 46' 58" W., a distance of 648.59 feet;
Thence, N. 00 deg. 09' 59" W., a distance of 645.79 feet to the
point of beginning.

A copy of the Mortgage is attached hereto as Exhibit 5.

9. To secure payment of Note 3, and any renewals or extensions thereof, Step Up, by and through its President, executed and delivered a mortgage to USDA dated June 11, 2010, upon real property located in Bernalillo County, New Mexico ("Mortgage 3"). The Mortgage was filed for record on June 11, 2010, Document No. 2010053520, records of Bernalillo County, New Mexico. The Mortgage is a first lien on the following described real property ("Property") subject to any outstanding taxes:

That certain Tract which is a portion of the Northwest One-Quarter (NW ¼) of Section Twenty-five (25) in Township Ten (10 North, Range Six (6) East of the New Mexico Principal Meridian, Bernalillo County, New Mexico, and being more particularly described as follows:

Beginning at the Northwest Corner of the tract herein described, which is the Northwest Corner of Section 25;

Thence, S. 89 deg. 43' 42" E., a distance of 641.77 feet;
Thence, S. 00 deg. 44' 47" E., a distance of 656.58 feet;
Thence, N. 88 deg. 46' 58" W., a distance of 648.59 feet;
Thence, N. 00 deg. 09' 59" W., a distance of 645.79 feet to the
point of beginning.

A copy of the Mortgage is attached hereto as Exhibit 6.

10. To further secure payment of the Notes and any renewals or extensions thereof, Step Up executed and delivered an Assignment of Revenue and Assessments

executed on April 17, 2009, pledging as additional security an assignment of all of the proceeds, revenue, assessments, contract rights, accounts, and general intangibles and all other income of whatever nature or kind, to the United States of America, acting by and through the Administrator of USDA Rural Development, Rural Utilities Service. A copy of the Assignment of Rents is attached hereto as Exhibit 7.

11. To further secure payment of the Notes and any renewals or extensions thereof, Step Up executed and delivered a Security Agreement on September 8, 2009 and Financing Statement executed on April 23, 2009, September 11, 2009 and June 11, 2010, pledging all of the present and future proceeds, revenues, contract rights, accounts receivables, general intangibles, assessments, income, goods, equipment, furniture, furnishings, and personal property of all kinds. The Security Agreement is attached hereto as Exhibit 8. The Financing Statements were filed for record on April 23, 2009, with the Secretary of State in New Mexico as a UCC-1 Filing No. 20090006609 C; September 11, 2009 UCC-1 Filing No. 20090014340 E and June 11, 2010, UCC-1 Filing No. 20100008656 K. A Continuation Statement was properly filed on December 21, 2015 No. 20150036613G. Copies of the Financing Statement and UCC Financing Statement Continuation Statements are attached hereto as Exhibit 9.

12. A Statement of Account Declaration attesting to the debt due is attached as Exhibit 10. The declaration shows a debt due and owing on Notes 1, 2 and 3 as of December 10, 2015, of \$811,227.80 plus a current interest due of \$159,454.01 and Administrative Fee of \$72,409.11 for a total amount due of \$1,043,090.92 with a daily accrual of \$96.78 as of December 10, 2015.

13. Pursuant to the terms of the Notes and Mortgages, Step Up agreed that each and every condition of the Notes would be performed. The installments due upon the Notes have not been paid, and pursuant to the terms of the Notes, the United States has accelerated the time for payment of all installments and declared the entire amount of indebtedness immediately due and payable. Demand has been made for payment of the Notes, but they remain due and unpaid.

14. The Mortgages provide that in the event of default of the Notes, the Mortgages are subject to foreclosure as provided by law, and that Step Up is liable for expenses and costs. The terms of the Notes have been breached, and the United States is entitled to have the Mortgages foreclosed. All conditions precedent to enforcement of the Notes and foreclosure of the Mortgages have occurred.

15. After all just credits and offsets are applied on the Notes, Step Up owes principal in the amount of \$811,227.80 plus a current interest due of \$159,454.01 and Administrative Fee of \$72,409.11 for a total amount due of \$1,043,090.92 with a daily accrual of \$96.78 as of December 10, 2015 to the date of judgment, with interest accruing at the legal rate thereafter until paid, plus the amount of any advances, including ad valorem taxes, a 10% surcharge as provided for by 28 U.S.C. § 3011, if appropriate, and the United States District Court Clerk filing fee in the amount of \$400.00 pursuant to 28 U.S.C. § 2412(a)(2).

WHEREFORE, the United States requests the following:

A. Judgment against Step Up Childcare, Inc., for the principal and accrued interest of \$811,227.80, plus a current interest due of \$159,454.01, an Administrative Fee

of \$72,409.11 for a total debt as of December 10, 2015 of \$1,043,090.02 with a daily accrual of \$96.78 as of December 10, 2015 to the date of judgment, with interest accruing at the legal rate thereafter until paid, plus any advances, including ad valorem taxes, a 10% surcharge as provided for by 28 U.S.C. § 3011, if appropriate, and the United States District Court Clerk filing fee in the amount of \$400.00 pursuant to 28 U.S.C. § 2412(a)(2).

B. The Mortgages be foreclosed.

C. The United States' liens on the real property and all chattels be declared first and prior liens subject to any outstanding taxes.

D. The Court appoint the United States Marshal as receiver to take possession of, advertise, and sell the Real Property and chattels to satisfy the indebtedness of Step Up Childcare, Inc., to the United States together with all costs and expenses of the foreclosure sale.

E. The sale be conducted by the Marshal for cash unless the United States should be the highest and best bidder, in which case the United States shall be allowed up to the amount of its judgment as credit on its bid.

F. The Marshal submit a report of the sale to the Court for approval and, upon approval of the report, the Marshal be released and discharged.

G. The purchaser at the foreclosure sale take immediate possession and title to the Real and Personal Property free and clear of any and all claims.

H. The proceeds of the sale be applied as follows: First, to the payment of the costs and expenses of foreclosure, taxes, advances and statutory fees; next, to the

payment and satisfaction of the judgment of the United States; and the balance, if any, to the registry of the Court pending further order or judgment of this Court.

I. All rights, claims, interests, title, or equity of any defendant and any person claiming through any defendant be barred and foreclosed as to the Real and Personal Property.

J. The redemption period be one month from the date of the sale.

K. The United States recover its costs together with a 10% surcharge as provided in 28 U.S.C. § 3011(a), if appropriate, a filing fee of \$400.00 pursuant to 28 U.S.C. § 2412(a)(2) and all such other and further relief as the Court deems proper.

Respectfully Submitted:

DAMON P. MARTINEZ
United States Attorney

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MANUEL LUCERO
Assistant U.S. Attorney
P.O. Box 607
Albuquerque, NM 87103
(505) 346-7274
manny.lucero@usdoj.gov